

AMENDED IN SENATE MAY 1, 1997

SENATE BILL

No. 696

Introduced by Senator Rainey

February 25, 1997

An act to amend Section 7660 of, and to add Sections 7600.6, 15688, ~~16042, and 16466~~ and 16042 to the Probate Code, relating to estates and trusts.

LEGISLATIVE COUNSEL'S DIGEST

SB 696, as amended, Rainey. Estates and trusts: public administrator and guardian.

(1) Existing law requires, if a person in a hospital, convalescent hospital, or board and care facility dies without known next of kin, the person in charge of the hospital or facility to provide immediate notice to the public administrator of the county of this fact.

This bill would require a funeral director or cemetery authority in control of the decedent's remains to notify the public administrator if specified persons do not exist, cannot be found after reasonable inquiry, or cannot be contacted by reasonable means.

(2) Existing law provides that, if a public administrator takes possession or control of a decedent's estate, the public administrator may summarily dispose of the estate, as specified, if either the total value of the estate does not exceed \$100,000 and there is a court order or the total value of the estate does not exceed \$10,000.

This bill would revise the latter amount to \$25,000.

(3) Existing law prohibits appointment of a public guardian as a trustee of a trust unless a court finds, as specified, that no other qualified person is willing to act as trustee. Existing law generally regulates the compensation of the trustee and provides that, upon proper showing, the court may fix or allow greater compensation than could be allowed under the terms of the trust in certain instances.

This bill would provide that, notwithstanding these provisions and the terms of the trust, a public guardian who is appointed as a trustee shall be paid from the trust property for specified expenses.

(4) Existing law requires a trustee to administer the trust with reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined by the trust instrument. Existing law also provides that a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule, as specified.

This bill would provide that, notwithstanding these provisions and the terms of the trust, all trust funds that come within the custody of the public guardian who is appointed as trustee of the trust may be deposited or invested in the same manner, and would be subject to the same terms and conditions, as a deposit or investment by the public administrator of funds in the estate of a decedent, as specified.

~~(5) Existing law provides that a violation by the trustee of any duty that the trustee owes to the beneficiary of a trust is a breach of trust and that, if the trustee commits such a breach, the trustee is chargeable for the breach, as specified. Existing law provides for the nonliability of a trustee for a breach in specified instances.~~

~~This bill would provide that a public guardian who is appointed as a trustee shall not be deemed personally liable for such a breach.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

SECTION 1. Section 7600.6 is added to the Probate Code, to read:

7600.6. A funeral director or cemetery authority in control of the decedent's remains pursuant to subdivision (b) of Section 7100 of the Health and Safety Code shall notify the public administrator if none of the persons described in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 7100 of the Health and Safety Code exist, can be found after reasonable inquiry, or can be contacted by reasonable means.

SEC. 2. Section 7660 of the Probate Code is amended to read:

7660. (a) If a public administrator takes possession or control of, or is appointed personal representative of, an estate pursuant to this chapter, the public administrator may summarily dispose of the estate in the manner provided in this article in either of the following circumstances:

(1) The total value of the property in the decedent's estate does not exceed the amount prescribed in Section 13100. The authority provided by this paragraph may be exercised only upon order of the court. The order may be made upon ex parte application. The fee to be allowed to the clerk for the filing of the application shall be set by the court.

(2) The total value of the property in the decedent's estate does not exceed twenty-five thousand dollars (\$25,000). The authority provided by this paragraph may be exercised without court authorization.

(b) Summary disposition may be made notwithstanding the existence of the decedent's will, if the will does not name an executor or if the named executor refuses to act.

(c) Nothing in this article precludes the public administrator from filing a petition with the court under any other provision of this code concerning the administration of the decedent's estate.

1 SEC. 3. Section 15688 is added to the Probate Code,
2 to read:

3 15688. Notwithstanding any other provision of this
4 article and the terms of the trust, a public guardian who
5 is appointed as a trustee of a trust pursuant to Section
6 15660.5 shall be paid from the trust property for all of the
7 following:

8 (a) Reasonable expenses incurred in the
9 administration of the trust.

10 (b) Compensation for services of the public guardian
11 and the attorney of the public guardian, and for the filing
12 and processing services of the county clerk in the amount
13 the court determines is just and reasonable.

14 (c) An annual bond fee in the amount of twenty-five
15 dollars (\$25) plus one-fourth of 1 percent of the amount
16 of the trust assets greater than ten thousand dollars
17 (\$10,000). The amount charged shall be deposited in the
18 county treasury.

19 SEC. 4. Section 16042 is added to the Probate Code,
20 to read:

21 16042. (a) Notwithstanding the requirements of this
22 article, Article 2.5 (commencing with Section 16045), and
23 the terms of the trust, all trust funds that come within the
24 custody of the public guardian who is appointed as trustee
25 of the trust pursuant to Section 15660.5 may be deposited
26 or invested in the same manner, and would be subject to
27 the same terms and conditions, as a deposit or investment
28 by the public administrator of funds in the estate of a
29 decedent pursuant to Article 3 (commencing with
30 Section 7640) of Chapter 4 of Part 1 of Division 7.

31 (b) Upon the deposit or investment of trust property
32 pursuant to subdivision (a), the public guardian shall be
33 deemed to have met the standard of care specified in this
34 article and Article 2.5 (commencing with Section 16045)
35 with respect to this trust property.

36 ~~SEC. 5. Section 16466 is added to the Probate Code,~~
37 ~~to read:~~

1 ~~16466. A public guardian who is appointed as a trustee~~
2 ~~shall not be deemed personally liable for any breach of~~
3 ~~the trust.~~

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